THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11782 OF 2003

Dated: 17th October, 2005.

Between:

1. A.P. Pesticides Formulators, rep. by
Its President M. Raja Mahender Reddy,
S/o. Jana Reddy, aged about 42 years,
R/o. Ashok Nagar, Hyderabad,
and another. … Petitioners

And

1. Commissioner & Director of Agriculture,
Government of A.P., Hyderabad,
and another. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.11782 OF 2003

-

ORDER :

The 1st petitioner is a society registered under the provisions of A.P. Telangana Area (Public Societies Registration) Act, 1350 Fasli. The 2nd petitioner is a member of the 1st petitioner association. It is claimed that all the members of the 1st petitioner Association are the Pesticide Manufacturers and Formulators.

This writ petition is filed aggrieved by the alleged action of the respondents in not considering the request of the petitioners for inclusion of various registered insecticide products in their manufacturing licences as arbitrary, illegal and contrary to the provisions of the Insecticides Act, 1968 and the Rules made thereunder.

I have heard the learned Counsel for the petitioners as well as the learned Government Pleader appearing for the respondents.

It is to be noted that the manufacture and sale of insecticides are governed by the provisions of the Insecticides Act, 1968 (for short, 'the Act') which provides for the constitution of a Central insecticides Board and also a Registration Committee. According to the Act, any person desiring to manufacture any insecticide must apply to the Registration Committee for registration of such insecticides and on receipt of such application the Registration Committee after following the prescribed procedure shall issue a Certificate of Registration. The various manufacturers are also required under the Act to obtain a licence from the prescribed licensing authority. The said Act *inter alia* provides for various officers and also delegates various authorities exercisable by them. Section 27 of the Act *inter alia* provides that the Central Government or the State Government may, after recording reasons, prohibit the sale of any insecticides if the same involves a risk to human beings or animals. On such notification published in the Gazette; the sale, distribution or use of insecticides shall stand prohibited. Certain insecticides which involve a high degree of toxicity and which are required to be carefully handled before usage are called as "Red Triangular Products".

The petitioners state that various members of the 1st petitioner association including

the second petitioner herein have registered with the authorities and have also obtained manufacturing licences. It is also stated that the said members of the first petitioner association are conducting their business by including and deleting various products from their manufacturing licences from time to time subject to their business requirements. While so, some of the members of the 1st petitioner association including the 2nd petitioner intended to manufacture certain products which are classified as 'Red Triangular Products' and accordingly submitted their applications requesting the 1st respondent to include Red Triangular Products apart from some other products in their licences. However, the 1st respondent while considering their applications has allowed only the products other than the Red Triangular Products and declined to include the Red Triangular Products in their manufacturing licences in spite of the fact that the sale of the said products has not been prohibited or banned by the Government under any provision of law.

It is contended that, as a matter of fact, various existing manufacturers in the State of A.P. who were already granted licences to manufacture such products have been allowed to continue the manufacture of the said products. Similarly, various manufacturers outside the State of A.P. are also continuing to manufacture the said products. It is alleged that the members of the 1st petitioner association alone are prevented from manufacturing the said products on the ground that a policy decision has been taken by the State Government to control the manufacture and flow of such products.

Hence, this writ petition seeking a declaration that the action of the respondent in not considering the applications made by the members of the 1st petitioner association including the 2nd petitioner for inclusion of products classified as 'Red Triangular Products' in their respective manufacturing licences is arbitrary, illegal, unconstitutional and contrary to the provisions of Insecticides Act, 1968 and Insecticide Rules, 1971 and consequently direct the respondent to include the said products in the manufacturing licences of the 1st petitioner's members.

The learned Counsel for the petitioners contends that the impugned action of the 1st respondent is beyond the powers conferred under the Insecticides Act, 1968 and the Rules made thereunder. The learned Counsel vehemently contends that the impugned action of the 1st respondent on the basis of the alleged policy decision of the State Government would amount to subjecting the petitioners to invidious discrimination violating Article 14 of the Constitution of India apart from interfering with the Fundamental Rights of the petitioners guaranteed under Article 19 (1) (g) of the Constitution of India.

In the counter-affidavit filed on behalf of the respondents, the fact that the Government of India has not prohibited the Products of Red Triangular category has not been denied. However, it is explained that the State Licensing Authority has taken a decision to restrict the more flow of Red Triangular Category Pesticides into the market as they are highly hazardous in nature and harmful to human beings and animals. It is further stated that there is more risk in the use of Red Triangular Category Pesticides and therefore safety measurers are necessary to prevent such risk. However, since the decision taken by the State Licensing Authority is not final, the opinion of the Secretary, Central Insecticide Board & Registration Committee, Faridabad has been sought and the necessary action will be taken to review the decision soon after the receipt of the reply from the Secretary, CIB & RC, Faridabad.

In the circumstances, the learned Government Pleader submits that the interference by this Court at this stage is not warranted.

Under Section 27 of the Insecticides Act, 1968, the sale, distribution or use of any insecticide specified in clause (e) of Section 3 may be prohibited by the Central / State Government for reasons to be recorded in writing for a period not exceeding 60 days by notification in the Official Gazette. Such prohibition pending investigation into the matter can be extended by further period of 30 days in aggregate by notification in the Official Gazette. In case, on receipt of report from the State Government or as a result of its own investigation and after consultation with the Registration Committee if the Central Government is satisfied that the use of said insecticide or batch is likely to cause any risk, it may pass such order refusing to register the insecticide or cancelling the Certificate of Registration, if any, already

granted. In case the Central Government is satisfied that the use of the said insecticide is not likely to cause any risk it may pass such order as it deems fit depending on the circumstances of the case.

Section 3 (e) of the Act defines Insecticides. According to the said definition, any substance specified in the Schedule to the Act is an insecticide.

In the case on hand, the specific case of the petitioners is that they sought inclusion of two products in their manufacturing licences namely Metamitron and Oxapyrazon which are included in the Schedule to the Act as items 398 and 452. However, the same has not been considered by the 1st respondent. Though the petitioners do not dispute the fact that the said two insecticides are identified as 'Red Triangular Products', their contention is that since the sale and distribution of the abovesaid insecticides have not been prohibited by notification as specified under Section 27 of the Act, the 1st respondent is not justified in not including the abvoesaid two insecticides in their manufacturing licences.

From the averments in the counter-affidavit, it is no doubt true that as of today there is no prohibition as such under Section 27 of the Act with regard to the abvoesaid two insecticides. However, it is clear that the State Government having opined that the abovesaid two insecticides which are classified as 'Red Triangular Products' are more hazardous in nature and harmful to human beings and animals, took a decision not to include any further Red Triangular Category Insecticides in the Manufacturing Licences / Principal Certificates in the State. It is also clear from the counter-affidavit that the 1st respondent has already addressed a letter to the Registration Committee on 6-5-2003 requesting to consider the resolution passed to that effect by the Committee constituted by the Office of the Commissioner & Director of Agriculture. Under sub-section (2) of Section 27, it is open to the State Government to forward such a report to the Central Government if it is of the opinion that the use of a particular insecticide or batch is likely to involve risk to human beings or animals.

Since the insecticides in question are stated to be highly hazardous in nature and harmful to human beings and animals and particularly in view of the fact that the 1st respondent on the basis of the resolution passed by the Committee constituted by the Commissioner & Director of Agriculture in which the 1st petitioner association has also participated, has already initiated proceedings to prohibit the sale, distribution or use of the Red Triangular Products, I am not inclined to issue a Writ of Mandamus as prayed for merely on the ground that as of today there is no notification under Section 27 of the Act prohibiting the sale and distribution of the insecticides in question. Instead, I deem it appropriate to dispose of the writ petition with a direction to the 1st respondent to expedite the proceedings already initiated and to take an appropriate decision after obtaining the opinion of the CIB & RC, Faridabad. The applications made by the members of the 1st petitioner association for inclusion of the insecticides in question in their manufacturing licences shall be reconsidered in terms of the decision that may be taken by the 1st respondent. Such exercise shall be completed as expeditiously as possible preferably within a period of six months from the date of receipt of this order.

Writ Petition is accordingly disposed of. No costs.

_____

17th October, 2005.

gbs